IN THE

SUPREME COURT

OF THE

UNITED STATES.

FEBRUARY TERM, 1905.

No. 292.

JOSEPH LOCHNER, PLAINTIFF IN ERROR,

against

THE PEOPLE OF THE STATE OF NEW YORK,
DEFENDANTS IN ERROR.

Brief for Defendants in Error.

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The Capitol, Albany, N. Y.

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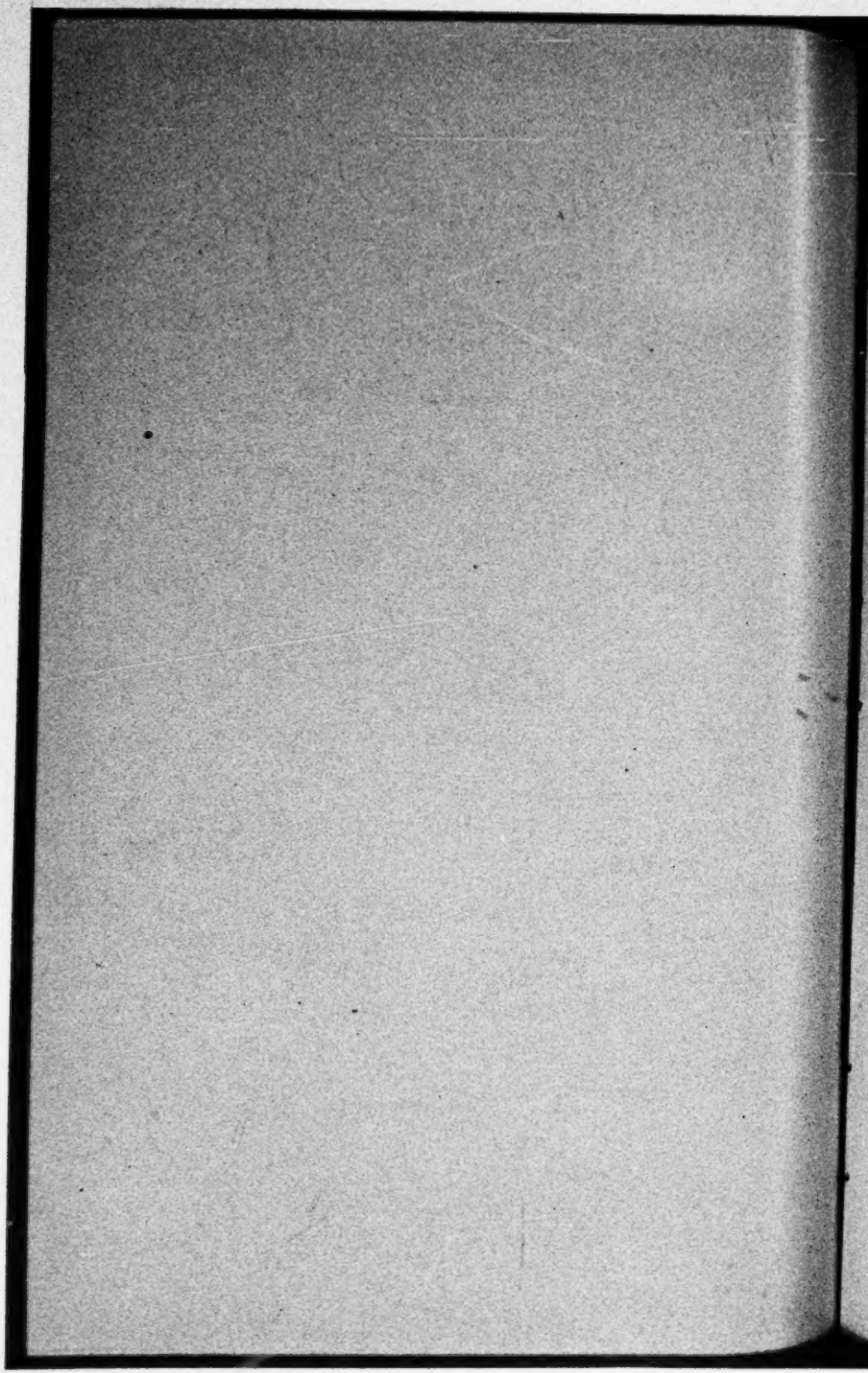

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JOSEPH LOCHNER,
PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF NEW YORK, DEF'TS IN ERROR.

No. 292.

BRIEF OF THE ATTORNEY GENARAL OF THE STATE OF NEW YORK ON BEHALF OF THE DEFENDANTS IN ERROR, THE PEOPLE OF THE STATE OF NEW YORK.

In error to the County Court of Oneida County, State of New York.

This is a writ of error allowed on the 18th day of May, 1904, directed to the County Court of Oneida county, State of New York, to review the determination of that court and of the Court of Appeals of the State of New York, affirming the determination of the County Court of Oneida county, in the State of New York, con-

victing the plaintiff in error of a misdemeanor, second offense, and sentencing him to pay a fine of fifty dollars and to stand convicted until said fine was paid, not to exceed fifty days, in the Oneida county jail.

Plaintiff in error was convicted for a violation of Article VIII, Section 110, of Chapter 415 of the Laws of the State of New York, known as the Labor Law of the State of New York, which section is as follows:

"HOURS OF LABOR IN BAKERIES AND CONFECTIONERY "ESTABLISHMENTS.

"Section 110. No employee shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work."

The plaintiff in error was indicted upon the ground that he permitted and required one Aman Schmitter, an employee in his employ, to work more than sixty hours in one week during the week commencing April 19 and ending April 26, 1901, at his biscuit, bread and cake bakery and confectionery establishment situated at No. 82-84 South street, in the city of Utica, Oneida county, New York. (Record, pages 2 and 3.)

The plaintiff in error demurred to the indictment upon the grounds—

First. That more than one crime is charged in the indictment, within the meaning of section 278 of the Code of Criminal Procedure of the State of New York.

Second. That more than one crime is charged in the

indictment, within the meaning of section 279 of the same Code; and

Third. That the facts stated do not constitute a crime. (Pages 3 and 4.)

The demurrer was overruled. The plaintiff in error refused to plead, and was thereupon convicted as above stated.

An appeal was taken to the Appellate Division of the Supreme Court of the State of New York, and the judgment of conviction was affirmed.

An appeal was taken from this determination to the Court of Appeals of the State of New York, which is the hightest court of law or equity of the State of New York, and on the 4th day of April, 1904, the judgment of conviction was affirmed and judgment to that effect entered.

POINTS.

I.

This Court is without jurisdiction to re-examine the judgment below.

The conflict, if any existed, between the laws of the State of New York and the Constitution of the United States, was not set forth in the demurrer to the indictment, and no other or different pleading was interposed by the plaintiff in error. There was no evidence taken, or trial had, other than his refusal to plead and his conviction. He did not ask for any instructions, nor did he except to any rulings of the court, and the question of the conflict of the laws of the State of New York and

the Federal Constitution was not necessarily involved in the decision of the County Court of Oneida county.

Home for Incurables v. City of New York, 187 U. S. 155.

From the pleadings in the case the County Court of Oneida county had no reason to suppose that the plaintiff in error especially claimed that the statute in question deprived him of any right secured by the Constitution of the United States.

"The jurisdiction of this court to re-examine the final "judgment of a State court cannot arise from inference, "but only from averments so distinct and positive as to "place it beyond question that the party bringing a case "here from such court intended to assert a Federal "right."

Oxley Stove Co. v. Butler County, 166 U. S. 648.
Levy v. Superior Court of San Francisco, 167 U. S. 175.

It is true that the judges of the Court of Appeals in their opinions discussed the question as to whether the law under consideration offended against the first section of the Fourteenth Amendment to the United States Constitution, or against sections one and six of article one of the United States Constitution; but there was nothing in the demurrer interposed by the plaintiff in error in the County Court of Oneida county which indicated that the plaintiff in error (there the defendant) intended to raise this Federal constitutional question.

II.

The New York statute under consideration involves an exercise of the police power of the State. The burden of demonstrating that this statute is repugnant to the provisions of the Federal Constitution is upon the plaintiff in error, and he must show that there was no basis upon which the State court could rest its conclusion that the legislation in question was a proper exercise of police power.

It is fundamental that the police power is necessarily elastic, so as to meet new and changing conditions of our civilization.

It is quite probable that fifty years ago or less the courts might have regarded as an improper exercise of the police power legislative enactments which are now considered obviously appropriate in this respect.

So it is that in different States we find different conditions of which the State itself is the best judge, and to meet which its Legislature frames and passes laws.

A State which contains within its borders many and large mining enterprises naturally gives to the subject of public health in connection with the working of mines a study which is not needed in a State where mines do not exist or are not worked.

Holden v. Hardy, 169 U. S. 368.

A great commercial and manufacturing State, like the State of New York, perforce, gives to the question of police regulation of conditions obtaining in factories

and workshops attention and study which might not be needed in a State the main employment of which are mining or farming.

The conditions and problems which present themselves to State legislatures and to State courts are, therefore, frequently peculiar to the locality. Investigations are made, public sentiment is aroused, conditions become the subject of common knowledge, and to meet all this the Legislature passes an act which must be presumed to be the clear expression of the will of that community. If there be differences of opinion as to the wisdom of such legislation, those differences must be determined by legislative enactment and by the construction which such enactment receives from the courts of the State in which the enactment is attacked.

Therefore when a law involving the exercise of the police power has been construed by the highest court of a State as constitutional, we submit that the person complaining of that construction upon an appeal to the Supreme Court of the United States must show in effect, that there is no fair or reasonable doubt that the enactment is unconstitutional, before this court will so hold.

III.

The conditions existing in the State of New York which may be considered as the occasion for the enactment of the statute under consideration.

The State of New York has the largest population of any State in the Union. In that State are situated great business and manufacturing centers, such as the city of

New York (now comprising the old city of New York, Brooklyn, Long Island City, and outlying districts), the cities of Buffalo, Rochester, Syracuse, Utica, and many other communities not so large in population, but in which are congregated considerable numbers of working people engaged in local industries.

In some of these cities the population is greatly congested, and in some sections of these cities people are crowded together much more closely in dwelling and business places than in others.

Labor has grown to be specialized, and great numbers of men and women, married and single, work during the day and, in some occupations, at night. The facilities for domestic cooking are infinitely more limited than they were years ago or than they are to-day in the smaller communities within the State itself, and in other parts of the country. And the opportunity to make bread at home is also more limited, because of the employment of the women of the family in great numbers as wage earners, and because, also, of the fact that great numbers of persons are unable to employ domestic servants.

The result is that the making of biscuit, bread, cake and confectionery has grown to be a great business. In all but the rural portions of the State there are to be found establishments which make and sell biscuits, bread, cake and confectionery.

These products are very generally sold to and consumed by the people at large.

It is needless to dilate upon the proposition that these flour and meal food products are important to the public health, and that they should be manufactured by cleanly persons and under surroundings and conditions which shall not menace but conserve the public health.

While it is true that confectionery is not needful in the daily life of our people, it is equally true that a great amount of it is consumed, particularly by women and children.

The main purpose of the enactment of the law under discussion was to safeguard the public health; but another purpose also, as we shall presently show, was to safeguard the health of those engaged in the occupation of making biscuit, bread, cake and confectionery.

The statute which sought to accomplish these results is a part of a codification known as "The Labor Law," being Article VIII thereof, and in words and figures as follows:

THE STATUTE.

"Section 110. *Hours of labor in bakeries and confectionery establishments.*—No employee shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work.

"Sec. 111. *Drainage and plumbing of buildings and rooms occupied by bakeries.*—All buildings or rooms occupied as biscuit, bread, pie or cake bakeries shall be drained and plumbed in a manner conducive to the proper and healthful and sanitary condition thereof, and shall be constructed with air shafts, windows or ventilating pipes, sufficient to insure ventilation. The factory inspector may direct the proper drainage, plumbing and ventilation of such rooms or buildings. No cellar or basement, not now used for a bakery, shall

"hereafter be so occupied or used, unless the proprietor "shall comply with the sanitary provisions of this ar- "ticle.

"Sec. 112. *Requirements as to rooms, furniture, "utensils and manufactured products.*—Every room "used for the manufacture of flour or meal food prod- "ucts shall be at least eight feet in height and shall have, "if deemed necessary by the factory inspector, an im- "permeable floor constructed of cement, or of tiles laid "in cement, or an additional flooring of wood properly "saturated with linseed oil. The side walls of such "rooms shall be plastered or wainscoted. The factory "inspector may require the side walls and ceiling to be "whitewashed, at least once in three months. He may "also require the wood work of such walls to be painted. "The furniture and utensils shall be so arranged as to "be readily cleansed and not prevent the proper clean- "ing of any part of a room. The manufactured flour "or meal food products shall be kept in dry and airy "rooms so arranged that the floors, shelves and all other "facilities for storing the same can be properly cleaned. "No domestic animals, except cats, shall be allowed to "remain in a room used as a biscuit, bread, pie or cake "bakery, or any room in such bakery where flour or "meal products are stored.

"Sec. 113. *Wash-room and closets; sleeping places.*— "Every such bakery shall be provided with a proper "wash-room and water-closet or water-closets apart from "the bake-room, or rooms where the manufacture of "such food product is conducted, and no water-closet, "earth-closet, privy or ashpit shall be within or con- "nected directly with the bake-room of any bakery, ho- "tel or public restaurant. No person shall sleep in a "room occupied as a bake-room. Sleeping places for "the persons employed in the bakery shall be separate

"from the rooms where flour or meal food products are "manufactured or stored. If the sleeping places are on "the same floor where such products are manufactured, "stored or sold, the factory inspector may inspect and "order them put in a proper sanitary condition.

"Sec. 114. *Inspection of bakeries.*—The factory in- "spector shall cause all bakeries to be inspected. If it "be found upon such inspection that the bakeries so in- "spected are constructed and conducted in compliance "with the provisions of this chapter, the factory inspec- "tor shall issue a certificate to the persons owning or "conducting such bakeries.

"Sec. 115. *Notice requiring alterations.*—If, in the "opinion of the factory inspector, alterations are re- "quired in or upon premises occupied and used as bak- "eries, in order to comply with the provisions of this "article, a written notice shall be served by him upon "the owner, agent or lessee of such premises, either per- "sonally or by mail, requiring such alterations to be "made within sixty days after such service, and such "alterations shall be made accordingly."

IV.

The statute under consideration was a proper exercise of the police power of the State.

It was claimed below, and considered by some of the dissenting judges, that this statute is a "labor" law, and has not to do with public health.

The view thus expressed was based to some extent upon the fact that the statute is found incorporated in "The Labor Law."

It is fundamental, of course, that a law is always what it is, and not what it is called, but in order that a clear understanding may be had of the so-called "Labor Law" of the State of New York, it may be desirable briefly to refer to that law.

In the State of New York there is a constant and proper effort to consolidate or codify enactments passed at different times into a general law, so that reference to the subject matter may be easy; and, therefore, scattered enactments are frequently gathered together under some one comprehensive title.

Various statutes have been passed regulating manufacture in tenement houses, the employment of women and children in factories and mercantile establishments, the employment of children in street trades, the hours of labor of persons employed by public service companies, the employment of persons in brickyards, metal polishing establishments and the like.

These laws were gathered together by the Legislature of 1897, and, by virtue of chapter 415 of the Laws of 1897, they became incorporated in the General Laws as Chapter XXXII, the short title of which is "The Labor Law."

An examination of this statute will show that this was a convenient codification of laws regulating the conditions under which certain goods and products should be manufactured or sold, and also regulating, for the purposes of public health, the hours of employes and the surroundings in which they should be employed.

(Annexed hereto for ready reference is Appendix II, containing the title of the act and certain specific provisions mentioned in this brief.)

As other laws of a similar general purpose are passed, they become sections of "The Labor Law," just as cognate laws become sections of "The Domestic Relations

Law," "Negotiable Instruments Law," and other codifications for purposes of convenience.

The statute under consideration was first passed in substantially its present form in 1895, constituting chapter 518 of that year.

Its title was, "AN ACT TO REGULATE THE MANUFACTURE OF FLOUR AND MEAL FOOD PRODUCTS."

(A copy of this Act will be found in Appendix I.)

This, then, was the true title of the Act, and evidences its purpose so far as the title is of any importance in ascertaining the intent of the Legislature.

It was an Act *to regulate the manufacture of flour and meal food products*, and not a "labor" law in the sense of regulating contractual relations between master and servant.

In point of fact, the Act, "The Labor Law," contains many provisions which have to do with the public health.

Upon examination it will appear that the police power is exercised by the Legislature in that Act, as follows:

Section 5: Provides that an consecutive hours' labor shall constitute a day's labor in the operation of street, surface and elevated railroads operated within cities of more than one hundred thousand inhabitants.

This is obviously to protect the public health and welfare, so that the safety of the public may not be endangered by the overworking of men charged with the duty of operating railroads carrying large numbers of persons.

Section 6: Provides that ten hours shall constitute a legal day's work in the making of brick in brickyards owned by corporations.

This is obviously a health regulation, necessitated by the danger of the particles getting into the throat and lungs of the employees, and thereby bringing on tuberculosis and other diseases. The nature and this charac-

ter of this occupation is shown by the many medical authorities collated by Judge Vann, at pages 32 and 33 of the record.

Section 7: Provides for the regulation of hours of labor on steam, surface and elevated railroads within the State.

Having the same purpose as section 5, *supra*.

Section 17: Provides a health regulation for female employees in factories, for waitresses in hotels and restaurants, by requiring seats and permitting the use thereof to such an extent as may be "reasonable for the preservation of their health."

Clearly a health regulation, having in mind the necessity of developing healthy women who shall bear healthy children.

Sections 77 and 78: Regulate the hours of employment of minors and women in factories.

Obviously a health regulation, for the reasons above stated as to women, and in order that minors shall not be stunted or sapped of their physical and mental strength.

Section 85: Requires at least two hundred and fifty cubic feet of air space in each room of a factory for each employee therein between six a. m. and six p. m., and at least four hundred cubic feet of air space in each room for each employee between six p. m. and six in the morning.

Obviously also a health regulation, so that work may be done under proper sanitary conditions.

Section 92: Provides that a shop, room or building where one or more persons are employed in doing public laundry work by way of trade, is a factory. So as to make the public laundry subject to the regulations relating to factories. This section also provides that no public laundry work shall be done in a room used for a sleeping or living room, and also that the laundry shall be kept clean.

Obviously a health regulation.

Section 93: Prohibits the employment of a male child under eighteen years of age, or of any female, in any factory operating or using any emery polishing or buffing wheel, where articles of the baser metals or articles of irradium are manufactured.

Obviously a health regulation, such as the brickyard regulation, *supra*, to protect against a dangerous and disease-creating occupation.

Section 100: Forbids the manufacturing of a large number of articles in tenement houses without obtaining a license therefor, as provided by the Tenement House Law.

Obviously to protect the public health in the use of garments manufactured in congested districts and unhealthful surroundings under conditions which, prior to the adoption of this law, were horrible to contemplate and were gravely dangerous to public health.

All these laws referred to in the foregoing sections indicate that, as our civilization advances and our population becomes more congested and our daily relations grow more complex, the police power of the State expands to meet these new conditions.

Yet the necessity for these enactments has arisen only in comparatively recent times; and not so many years ago such legislation might have evoked contempt instead of the respect and dignity which it now commands.

Another consideration for this class of legislation in the State of New York is the fact that there have come to that State great numbers of foreigners with habits which must be changed so that in due course of time there may be that assimilation which has made so successful our previous immigrations.

These laws are all designed to meet this and many other new problems which are confronting us as the years go by.

In the light, then, of this general type of legislation prevailing in the State of New York, we may consider the statute now before this Court.

Each section of the statute is not to be read alone, but, in conformity with well-settled principles, each section must be read with every other section, to the end that they may be a complete and harmonious scheme of legislation.

It will not be contended for a moment that section 111, having to do with the drainage and plumbing of buildings and rooms occupied by bakers; section 112, relating to the requirements as to rooms, furniture, utensils and manufactured products; section 113, relating to wash-rooms, closets and sleeping places; section 114, relating to inspection of bakeries, contain within them anything other than public health regulations.

We come, then, to the consideration of section 110, always remembering that it is not the purpose of that section to regulate the contractual relation between master and servant.

Under its exercise of the police power the State has gone back of the store where biscuit, bread, cake and confectionery is exposed for sale, and down into the cellars, regulating the plumbing, the ventilation, the draining, the exclusion of sleeping rooms, privy vaults, domestic animals.

Is the condition, as to health and cleanliness, of the man who makes the bread a matter of no concern with the new knowledge which has come to us from the scientific student, and with our present enlightenment as to the need for sanitary precautions? Is it not true that the man who suffers with skin diseases, with tuberculosis and other affections, may communicate some of the germs of his disorder to this product which is to be eaten by the mass of our people?

Is it not equally true that, working as the baker does, at night, he is more likely to contract disease by reason of the impoverishment and deterioration of his physical system and his exclusion from the sunlight in which it is the privilege of most of us to do our daily work?

All these are considerations which lead us to the question: Who shall say where the line shall be drawn in the exercise of the police power in a subject of this character? Shall it be the courts, or shall it be the Legislature, which must be presumed to have had before it all the facts upon which it could make a deliberate and intelligent judgment?

The necessity for these safeguards may not exist in the private house or in the hotel or restaurant. Whether such necessity exists in hotels or restaurants is eminently a matter for the Legislature to determine.

It is not important here, because this statute does not seek to regulate the making of bread in private homes or in hotels or restaurants. It regulates the making of biscuit, bread, cake or confectionery in establishments which are carried on for that purpose and engaged in that business, and as it applies to all such establishments alike, there is no discrimination in the statute, for it comprehends all persons of the same class.

The power of the Legislature to decide what laws are necessary to secure the public health, safety or welfare is subject to the power of the court to decide whether an act purporting to promote the public health or safety has such a reasonable connection therewith as to appear upon inspection to be adapted to that end. And the court may order judicial notice of the fact of the common belief of the people upon that subject.

Matter of Viemeister, 179 N. Y. 235.

Perhaps the necessity for caution and protection in dealing with breadstuffs cannot be better illustrated than

by a provision of the Sanitary Code of the city of New York.

The Sanitary Code is a code of ordinances relating to the public health, adopted by the Board of Health, of the Department of Health of the city of New York, pursuant to power conferred upon it by the Legislature. In order to prevent particles and microbes from gaining access to certain food products, section 46 of the Sanitary Code above referred to provides as follows:

"Section 46. No breadstuffs, cake, pastry, dry or "preserved fuits, candies or confectionery, shall be kept, "sold or offered for sale outside of a building in the "city of New York, or in any street or public place, "unless they be kept properly covered, so that they shall "be protected from dust and dirt."

Another and final reason in support of this statute is the proper desire of the people to so safeguard their citizens that they shall be strong and healthy, for the State has a profound interest in the normal vitality of its citizens, who may be called upon to suppress riot or disorder within its borders, or to enlist in the service of their country for foreign war whenever they may be called upon.

In occupations of this character, carried on in the main at night, and in cellars and other underground places, having no change or variation which lightens the monotony, nothing makes for the health of the man more than a fair, apportionment of his hours of labor. What that apportionment or limit shall be is again peculiarly a subject to be finally disposed of by the Legislature, and unless the restriction is patently unreasonable, the Legislature must necessarily be the final judge of the reasonableness of the legislation regulating hours of labor.

Some reference was made by Judge O'Brien (Record, fols. 56 and 57) to the word "permit," which is used in

the statute—"no employee shall be required or *permitted to work.*"

There are two views of the use of this word:

First: The use of this word was careful drafting, so as to prevent evasion of the statute. It was intended to be a barrier to the employer who might testify that he had not orally or in writing *required* his employe to work, and yet he might by inference and acquiescence accomplish the same result by "permitting" him to so work.

Secondly: The State, in undertaking this regulation, has a right to safeguard the citizen against his own lack of knowledge. In dealing with certain classes of men the State may properly say that, for the purpose of having able-bodied men at its command when it desires, it shall not permit these men, when engaged in dangerous or unhealthful occupations, to work for a longer period of time each day than is found to be in the interest of the health of the person upon whom the legislation acts.

The unhealthful character of the baker's occupation was fully commented upon by Judge Vann in his opinion, which will be found at fols. 47-54 of the record.

The opinions of the judges of the Court of Appeals are so exhaustive and refer so fully to the cases on this subject, that we shall content ourselves, in conclusion, with but two observations, in the language of this court and of the Court of Appeals of the State of New York:

"The propriety of its exercise within constitutional "limits is purely a matter of legislative discretion with "which courts cannot interfere."

People v. King, 110 U. S. 418-423.

If the Act "admits of two constructions as to its be-"ing a health measure or otherwise, the courts should

"give the construction which sustains the Act and makes "it applicable in furtherance of the public interests."
Bohmer v. Haffen, 161 N. Y. 390-399.

V.

It is respectfully submitted that the judgment of the courts of New York should be affirmed and the writ of error dismissed.

Respectfully submitted,
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APPENDIX I.

CHAPTER 518, LAWS OF 1895.

AN ACT to Regulate the Manufacture of Flour and Meal Food Products.

(Became a law May 2, 1895, with the approval of the Governor. Passed, three-fifths being present.)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. No employe shall be required, permitted or suffered to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week, nor more hours in any one week than will make an average of ten hours per day

for the whole number of days in which such person shall so work during such week.

Sec. 2. All buildings occupied as biscuit, bread or cake bakeries shall be drained and plumbed in a manner to conduce to the proper and healthful sanitary condition thereof, as the factory inspector or any of his deputies shall direct.

Sec. 3. Every room used for the manufacture of flour or meal food products shall have, if deemed necessary by the factory inspector, an impermeable floor constructed of cement or of tiles, laid in cement, with an additional flooring of wood properly saturated with linseed oil. The side walls and ceilings of such rooms shall be plastered or wainscoted, and, if required by the factory inspector or a deputy factory inspector, shall be whitewashed at least once in three months. The furniture and utensils in such rooms shall be so arranged that the furniture and floor may at all times be kept in a proper and healthful sanitary and clean condition.

Sec. 4. The manufactured flour or meal food products shall be kept in perfectly dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing the same can be easily and perfectly cleaned.

Sec. 5. Every such bakery shall be provided with a proper wash-room and water-closet or closets, apart from the bake-room or rooms where the manufacturing of such food products is conducted; and no water-closet, earth-closet, privy or ash-pit shall be within or communicate directly with the bake-room of any bakery, hotel or public restaurant.

Sec. 6. The sleeping places for the persons employed in a bakery shall be separate from the room or rooms where flour or meal food products are manufactured or stored.

Sec. 7. Any person who violates any of the provisions of this act, or refuses to comply with any requirement of the factory inspector or a deputy factory inspector, as provided herein, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than twenty nor more than fifty dollars for a first offense, and not less than fifty nor more than one hundred dollars for a second offense, or imprisonment for not more than ten days, and for a third offense by a fine of not less than two hundred and fifty dollars and not more than thirty days' imprisonment.

Sec. 8. For the purpose of enforcing this act and of chapter four hundred and nine of the laws of eighteen hundred and eighty-six, and acts amendatory thereof, the factory inspector may appoint four additional deputies, each of whom shall receive an annual salary of one thousand two hundred dollars, together with his necessary traveling and other expenses incurred in discharging the duties of his office, payable monthly by the treasurer on the warrant of the Comptroller, upon proper vouchers approved by the factory inspector. Under the direction of the factory inspector, such deputies shall inspect all bakeries and see that the provisions of this act and of chapter four hundred and nine of the laws of eighteen hundred and eighty-six, and the acts amendatory thereof, are observed therein. Such deputies shall have all the powers and duties of the deputy inspectors and shall be amenable to the supervision and control of the factory inspector the same as the deputy factory inspectors appointed under chapter four hundred and nine of the laws of eighteen hundred and eighty-six, and the acts amendatory thereof.

Sec. 9. The owner, agent or lessee of any property affected by the provisions of sections two, three or five of this act shall, within sixty days after the service of

a notice requiring any alterations to be made in or upon such premises, comply therewith, and such notice shall be in writing and may be served upon such owner, agent or lessee, either personally or by mail, and a notice mailed to the last known address of such owner, agent or lessee shall be deemed sufficient for the purposes of this act.

Sec. 10. This act shall take effect immediately.

APPENDIX II.

Title of and extracts from the "Labor Law" of the State of New York, being chapter 415 of the Laws of 1897 (as amended) and chapter XXXII of the "General Laws" of the State of New York:

THE LABOR LAW.

(Chapter 415 of the Laws of 1897, constituting Chapter XXXII of the General Laws.)

Article I. General provisions. (§§ 1-21.)
II. Commissioner of labor statistics. (§§ 30-32.)
III. Public employment bureaus. (§§ 40-43.)
IV. Convict-made goods and duties of commissioner of labor statistics relative thereto. (§§ 50-55.)
V. Factory inspector, assistant and deputies. (§§ 60-67.)
VI. Factories. (§§70-93.)
VII. Tenement-made articles. (§§ 100-106.)
VIII. Bakery and confectionery establishments. (§§ 110-115.)
IX. Mines and their inspection. (§§ 120-129.)
X. State board of mediation and arbitration. (§§ 140-149.)
XI. Employment of women and children in mercantile establishments. (§§ 160-173.)
XII. Employment of children in street trades. (§§ 174-179a.)
XIII. Examination and registration of horseshoers. (§§ 180-184.)
XIV. Laws repealed; when to take effect. (§§ 190-191.)

ARTICLE I.

General Provisions.

Section 1. Short title.
2. Definitions.
3. Hours to constitute a day's work.
4. Violations of the labor law.
5. Hours of labor on street surface and elevated railroads.
6. Hours of labor in brickyards.
7. Regulation of hours of labor on steam surface and elevated railroads.
8. Payment of wages by receivers.
9. Cash payment of wages.
10. When wages are to be paid.
11. Penalty for violation of preceding sections.
12. Assignment of future wages.
13. Preference in employment of persons upon public works.
14. Stone used in State or municipal works.
15. Labels, brands, etc., used by labor organizations.
16. Penalty for illegal use of labels, etc.; injunction proceedings.
17. Seats for female employes.
18. Scaffolding for use of employes.
19. Inspection of scaffolding, ropes, blocks, pulleys and tackles in cities.
20. Protection of persons employed on buildings in cities.
21. Factory inspector to enforce provisions of article.

Section 1. *Short title.*—This chapter shall be known as the Labor Law.

Sec. 2. *Definitions.*—The term employe, when used in this chapter, means a mechanic, workingman or laborer who works for another for hire.

The person, employing any such mechanic, workingman or laborer, whether the owner, proprietor, agent, superintendent, foreman or other subordinate, is designated in this chapter as an employer.

The term factory, when used in this chapter, shall be construed to include also any mill, workshop, or other manufacturing or business establishment where one or more persons are employed at labor.

The term mercantile establishment, when used in this chapter, means any place where goods, wares or merchandise are offered for sale.

The term tenement house, where used in this chapter, means any house or building, or portion thereof, which is rented, leased, let or hired out, to be occupied, or is occupied as the home or residence of three families or more living independently of each other, and doing their cooking upon the premises, and having a common right in the halls, stairways, yards, water-closets or privies, or some of them, and for the purposes of this act shall be construed to include any building on the same lot with any dwelling house and which is used for any of the purposes specified in section one hundred of this act.

Sec. 5. *Hours of labor on street surface and elevated railroads.*—Ten consecutive hours' labor, including one-half hour for dinner, shall constitute a day's labor in the operation of all street surface and elevated railroads, of whatever motive power, owned or operated by corporations in this State, whose main line of travel, or whose routes lie principally within the corporate limits of cities of more than one hundred thousand inhabitants. No employe of any such corporation shall be permitted or allowed to work more than ten consecutive hours, including one-half hour for dinner, in any one day of twenty-four hours. In cases of accident or unavoidable delay, extra labor may be performed for extra compensation.

Sec. 6. *Hours of labor in brickyards.*—Ten hours, exclusive of the necessary time for meals, shall constitute a legal day's work in the making of brick in brickyards owned or operated by corporations. No corporation owning or operating such brickyards shall require employes to work more than ten hours in any one day, or to commence work before seven o'clock in the morning. But overwork and work prior to seven o'clock in

the morning for extra compensation may be performed by agreement between employer and employe.

Sec. 7. *Regulation of hours of labor on steam surface and elevated railroads.*—Ten hours' labor, performed within twelve consecutive hours, shall constitute a legal day's labor in the operation of steam surface and elevated railroads owned and operated within this State, except where the mileage system of running trains is in operation. But this section does not apply to the performance of extra hours of labor by conductors, engineers, firemen and trainmen in case of accident or delay resulting therefrom. For each hour of labor performed in any one day in excess of such ten hours, by any such employe, he shall be paid in addition at least one-tenth of his daily compensation. No person or corporation operating a line of railroad of thirty miles in length or over, in whole or in part within this State, shall permit or require a conductor, engineer, fireman or trainman, who has worked in any capacity for twenty-four consecutive hours, to go again on duty or perform any kind of work, until he has had at least eight hours' rest.

Sec. 17. *Seats for female employes.*—Every person employing females in a factory or as waitresses in a hotel or restaurant shall provide and maintain suitable seats for the use of such female employes, and permit the use thereof by such employes to such an extent as may be reasonable for the preservation of their health. (As amended by L. 1900, ch. 533.)

Sec. 77. *Hours of labor of minors and women.*—No minor under the age of sixteen years shall be employed, permitted or suffered to work in any factory in this State before six o'clock in the morning, or after nine o'clock in the evening of any day, or for more than nine hours in any one day. No minor under the age of eighteen years, and no female shall be employed, permitted

or suffered to work in any factory in this State before six o'clock in the morning, or after nine o'clock in the evening of any day; or for more than ten hours in any one day, except to make a shorter work day on the last day of the week; or for more than sixty hours in any one week, or more hours in any one week than will make an average of ten hours per day for the whole number of days so worked. A printed notice, in a form which shall be prescribed and furnished by the commissioner of labor, stating the number of hours per day for each day of the week required of such persons, and the time when such work shall begin and end, shall be kept posted in a conspicuous place in each room where they are employed. But such persons may begin their work after the time for beginning and stop before the time for ending such work, mentioned in such notice, but they shall not otherwise be employed, permitted or suffered to work in such factory except as stated therein. The terms of such notice shall not be changed after the beginning of labor on the first day of the week without the consent of the commissioner of labor. The presence of such persons at work in the factory at any other hours than those stated in the printed notice shall constitute *prima facie* evidence of a violation of this section of the law. (As amended by L. 1889, ch. 192 and L. 1903, ch. 184.)

Sec. 78. *Change of hours of labor of minors and women.*—When in order to make a shorter work day on the last day of the week, a minor over sixteen and under eighteen years of age, or a female sixteen years of age or upwards, is to be required or permitted to work in a factory more than ten hours in a day, the employer of such person shall notify the commissioner of labor in writing, of such intention, stating the number of hours of labor per day, which it is proposed to require or permit, and the time when it is proposed to cease such re-

quirement or permission; a similar notification shall be made when such requirement or permission has actually ceased. A record of the names of the employes thus required or permitted to work overtime, with the amount of such overtime, and the days upon which such work was performed, shall be kept in the office of such factory, and produced upon the demand of the commissioner of labor. (As amended by L. 1899, ch. 192, and L. 1903, ch. 184.)

Sec. 85. *Size of rooms.*—No more employes shall be required or permitted to work in a room in a factory between the hours of six o'clock in the morning and six o'clock in the evening than will allow to each of such employes, not less than two hundred and fifty cubic feet of air space; and, unless by a written permit of the factory inspector, not less than four hundred cubic feet for each employe, so employed between the hours of six o'clock in the evening and six o'clock in the morning, provided such room is lighted by electricity at all times during such hours, while persons are employed therein.

Sec. 92. *Laundries.*—A shop, room or building where one or more persons are employed in doing public laundry work by way of trade or for purposes of gain is a factory within the meaning of this chapter, and shall be subject to the visitation and inspection of the factory inspector, and the provisions of this chapter in the same manner as any other factory. No such public laundry work shall be done in a room used for a sleeping or living room. All such laundries shall be kept in a clean condition and free from vermin and all impurities of an infectious or contagious nature. This section shall not apply to any female engaged in doing custom laundry work at her home for a regular family trade. (Added by L. 1901, ch. 477.)

Sec. 93. *Employment of women and children at polishing or buffing.*—No male child under the age of eigh-

teen years, nor any female, shall be employed in any factory in this State in operating or using any emery, tripoli, rouge, corundum, stone, carborundum or any abrasive, or emery polishing or buffing wheel, where articles of the baser metals or of iridium are manufactured. The owner, agent or lessee of a factory who employs any such person in the performance of such work is guilty of a misdemeanor and upon conviction thereof shall be fined the sum of fifty dollars for each such violation. The commissioner of labor, his assistants and deputies, shall enforce the provisions of this section. (Added by L. 1899, ch. 375; renumbered by L. 1901, ch. 478; amended and renumbered by L. 1903, ch. 561.)

ARTICLE VII.

Tenement-Made Articles.

Section 100. Manufacturing, altering, repairing or finishing articles in tenements.

Sec. 100. *Manufacturing, altering, repairing or finishing articles in tenements.* — No tenement house nor any part thereof shall be used for the purpose of manufacturing, altering, repairing or finishing therein, any coats, vests, knee-pants, trousers, overalls, cloaks, hats, caps, suspenders, jerseys, blouses, dresses, waists, waistbands, underwear, neckwear, furs, fur trimmings, fur garments, skirts, shirts, aprons, purses, pocketbooks, slippers, paper boxes, paper bags, feathers, artificial flowers, cigarettes, cigars or umbrellas, without a license therefor as provided in this article. But nothing herein contained shall apply to collars, cuffs, shirts or shirtwaists made of cotton or linen fabrics that are subjected to the laundrying process before being offered for sale. Application for such a license shall be made to the commissioner of labor by the owner of such tenement house, or

by his duly authorized agent. Such application shall describe the house by street number or otherwise, as the case may be, in such manner as will enable the commissioner of labor easily to find the same; it shall also state the number of apartments in such house; it shall contain the full name and address of the owner of the said house, and shall be in such form as the commissioner of labor may determine. Blank applications shall be prepared and furnished by the commissioner of labor. Upon receipt of such application the commissioner of labor shall consult the records of the local health department or board, or other appropriate local authority charged with the duty of sanitary inspection of such houses; if such records show the presence of any infectious, contagious or communicable disease, or the existence of any uncomplied with orders or violations which indicate the presence of unsanitary conditions in such house, the commissioner of labor, may, without making an inspection of the building, deny such application for a license, and may continue to deny such application until such time as the records of said department, board or other local authority show the said tenement house is free from the presence of infectious, contagious or communicable disease, and from all unsanitary conditions. Before, however, any such license is granted, an inspection of the building sought to be licensed must be made by the commissioner of labor, and a statement must be filed by him as a matter of public record, to the effect that the records of the local health department or board or other appropriate authority charged with the duty of sanitary inspection of such houses, show the existence of no infectious, contagious or communicable disease nor of any unsanitary conditions in the said house; such statement must be dated and signed in ink with the full name of the employe responsible therefor. A similar statement similarly signed, showing the results

of the inspection of the said building must also be filed in the office of the commissioner of labor before any license is granted. If the commissioner of labor ascertain that such building is free from infectious, contagious or communicable disease, that there are no defects of plumbing that will permit the free entrance of sewer air, that such building is in a clean and proper sanitary condition and that the articles specified in this section may be manufactured therein under clean and healthful conditions, he shall grant a license permitting the use of such building, for the purpose of manufacturing, altering, repairing or finishing such articles. Such license shall be framed, such frame to be furnished by the commissioner of labor upon receipt by him of one dollar for which a receipt in writing shall be given, and shall be posted by the owner in a conspicuous place in the public hallway on the entrance floor of the building to which it relates. It may be revoked by the commissioner of labor if the health of the community or of the employes requires it, or if the owner of the said tenement house, or his duly authorized agent fails to comply with the orders of the commissioner of labor within ten days after the receipt of such orders, or if it appears that the building to which such license relates is not in a healthy and proper sanitary condition. In every case where a license is revoked or denied by the commissioner of labor the reasons therefor shall be stated in writing, and the records of such revocation or denial shall be deemed public records. Where a license is revoked, before such tenement house can again be used for the purposes specified in this section, a new license must be obtained, as if no license had previously existed. Every tenement house and all the parts thereof in which any of the articles named in this section are manufactured, altered, repaired or finished shall be kept in a clean and sanitary condition and shall be sub-

ject to inspection and examination by the commissioner of labor, for the purpose of ascertaining whether said garments or articles or part or parts thereof, are clean and free from vermin and every matter of an infectious or contagious nature. An inspection shall be made by the commissioner of labor of each licensed tenement house not less than once in every six months, to determine its sanitary condition, and shall include all parts of such house and the plumbing thereof. Before making such inspection the commissioner of labor may consult the records of the local department or board charged with the duty of sanitary inspection of tenement houses, to determine the frequency of orders issued by such department or board in relation to the said tenement house, since the last inspection of such building was made by the commissioner of labor. Whenever the commissioner of labor finds any unsanitary condition in a tenement house for which a license has been issued as provided in this section, he shall at once issue an order to the owner thereof, directing him to remedy such condition forthwith. Whenever the commissioner of labor finds any of the articles specified in this section manufactured, altered, repaired or finished, or in process thereof, in a room or apartment of a tenement house, and such room or apartment is in a filthy condition, he shall notify the tenants thereof to immediately clean the same, and to maintain it in a cleanly condition at all times; where the commissioner of labor finds such room or apartment to be habitually kept in a filthy condition, he may in his discretion cause to be affixed to the entrance door of such apartment a placard calling attention to such facts and prohibiting the manufacturing, alteration, repair or finishing of said articles therein. No person, except the commissioner of labor, shall remove or deface any such placard so affixed. None of the articles specified in this section shall be

manufactured, altered, repaired or finished in any room or apartment of a tenement house, where there is or has been a case of infectious, contagious or communicable disease in such room or apartments, until such time as the local department or board of health shall certify to the commissioner of labor that such disease has terminated, and that the said room or apartment has been properly disinfected, if disinfection after such disease is required by the local ordinances, or by the rules or regulations of such department or board. None of the articles specified in this section shall be manufactured, altered, repaired, or finished in a part of a cellar or basement of a tenement house, which is more than one-half of its height below the level of the curb or ground outside of or adjoining the same. No person shall hire, employ or contract with any person to manufacture, alter, repair, or finish, any of the articles named in this section in any room or apartment in any tenement house not having a license therefor issued as aforesaid. None of the articles specified in this section shall be manufactured, altered, repaired, or finished in any room or apartment of a tenement house by any person other than the members of the family living therein, which shall include a husband and wife and their children, or the children of either. Nothing in this section contained shall prevent the employment of a tailor or seamstress by any person or family for the purpose of making, altering, repairing, or finishing any article of wearing apparel for the use of such person or family. (As amended by ch. 191, L. of 1899, and ch. 550, L. of 1904.)